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IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
EDGAR COUNTY, ILLINOIS

FILED

SEP 27 2017

Angela R. Barrett
Circuit Clerk, 5th Judicial Circuit Edgar County

RIDES MASS TRANSIT DISTRICT,)
)
)
Plaintiff,)
vs.)
)
DONALD WISEMAN, EDGAR COUNTY)
TREASURER, in his official capacity, and the)
EDGAR COUNTY BOARD,)
)
Defendants.)

No: 2016-L-16

**DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S SECOND AMENDED COMPLAINT**

NOW COME the Defendants, DONALD WISEMAN, in his official capacity as Edgar County Treasurer, and the EDGAR COUNTY BOARD by Giffin, Winning, Cohen & Bodewes, P.C., through Edgar County State's Attorney Mark Isaf, as Special Prosecutor, and for their Section 2-619.1 Motion to Dismiss Plaintiff's Second Amended Complaint, respectfully state as follows:

1. Defendants bring this Motion pursuant to 735 ILCS 5/2-619.1, which provides that "Motions with respect to pleadings under Section 2-615, motions for involuntary dismissal or other relief under Section 2-619, and motions for summary judgment under Section 2-1005 may be filed together as a single motion in any combination."
2. Plaintiff's Second Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-619(a)(9) because the lack of a prior appropriation defeats any obligation of funds on behalf of a county.

3. Plaintiff's Second Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-619(a)(9) because the Edgar County resolution dated June 17, 2013 is void *ab initio* and cannot form the basis for relief.

4. Plaintiff's Second Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-619(a)(9) because the transfer from Edgar County to Rides Mass Transit District constitutes an impermissible gift.

5. Count I of the Plaintiff's Second Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-615 because Plaintiff has failed to allege facts sufficient to support a claim for promissory estoppel.

6. Count II of the Plaintiff's Second Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-615 because Plaintiff has failed to allege facts sufficient to support a claim for breach of contract.

7. Count III of the Plaintiff's Second Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-615 because Plaintiff has failed to plead a unilateral contract and facts sufficient to support a claim for breach thereof.

8. Count IV of the Plaintiff's Second Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-615 because Plaintiff has failed to allege facts sufficient to support a claim for mandamus.

9. Counts I and IV of the Plaintiff's Second Amended Complaint must be dismissed pursuant to 735 ILCS 5/2-619(a)(5) because laches bars plaintiff's claims for promissory estoppel and mandamus.

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Kidex v. Donald Wiseman.

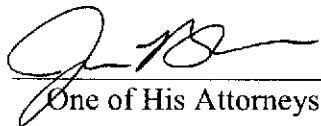
Edgar County Case No. 16-L-16

WHEREFORE, Defendant prays this Court enter an Order:

- A. Dismissing Plaintiff's Second Amended Complaint with prejudice; and
- B. For any and all such further and equitable relief that the Court deems just.

Respectfully Submitted,

**DONALD WISEMAN, in his official capacity as
EDGAR COUNTY TREASURER, Defendant**

By: 

One of His Attorneys

Jason Brokaw, Reg. No. 6305541
Christopher Sherer, Reg. No. 6275910
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Nides v. Donald Wiseman.

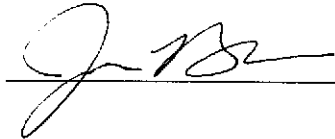
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PROOF OF SERVICE

Service of the foregoing document was made by mailing a copy thereof, in a sealed envelope, postage fully prepaid, addressed to:

Robert C. Wilson
Jackson & Wilson LLC
PO Box 544
Harrisburg, IL 62946

and by depositing same in the United States Mail from the office of the undersigned on this 26th day of September, 2017.



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